IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

S.B.CRIMINAL REVISION PETITION NO. 119/07

(Ramdev & Anr. V/s State of Rajasthan & Anr.)

Date of Order : 01/08/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Kulwant Singh for the petitioners.
Mr. V.R.Mehta, P.P.

BY THE COURT:-

By the instant criminal revision petition under Section 397/401 Cr.P.C., the accused petitioners have challenged the order dated 10.1.2007 passed by Additional Sessions Judge (Fast Track), Hanumangarh (for short 'the trial court' hereinafter) whereby the trial court allowed the application filed by the prosecution under Section 319 Cr.P.C. and impleaded the present two petitioners as an accused along with co-accused Raju Dhanka and Prem facing trial.

I have heard learned counsel for the parties. Perused the order impugned as also challan papers. I have carefully gone through the examination-in-chief of PW-7 Brijlal. The witness has not been cross-examined so far as the cross-examination has been reserved at the request of public prosecutor conducting the

case before the trial court.

It is contended by learned counsel for the petitioners that no overt act has been assigned to the present two petitioners. It was Raju Dhanka who alleged to have inflicted knife blow to the injured PW-7 Brijlal. The injury by sharp edged weapon to injured Brijlal has been assigned specifically to co-accused Raju Dhanka and other person challaned by the police is co-accused Prem. During investigation, the police did not find any case against the present two petitioners. Even in the statement of injured, no specific overt act has been assigned to the present petitioner and it is only stated that they were present. It was the occurrence at the bus stand and there were many passengers at the relevant time as stated by complainant Brijlal. Merely because these two petitioners were also present at the relevant time along with many others, it cannot be a ground to presume that they shared a common intention with co-accused Raju Dhanka who inflicted knife blow to the injured. In the statement as also Parcha Bayan, no specific overt act has been assigned to the present petitioners. The trial court vide its order also noticed that only the presence of these two petitioners have been shown at the place of occurrence. From the perusal of the order impugned, it no where appears that any overt act has been assigned to the present petitioners and it cannot be said that there were compelling reasons before the trial court to

proceed against these two petitioners under Section 319 Cr.P.C.

Keeping in view the decision of Hon'ble Supreme Court in Michael Machado and Anr. Vs. Central Bureau of Investigation and Anr. 2000 Cr.L.R. (SC) 265 and a recent decision of Hon'ble Supreme Court in Lok Ram Vs. Nihal Singh and Anr. 2006 Cr.L.R. (SC) 414, in my view the trial court fell in error in exercising power under Section 319 Cr.P.C. The power under Section 319 Cr.P.C. are to be exercised sparingly, consciously and in exception cases where there exist compelling reasons before the trial court to do so. I do not find any such reasons from the statement of injured as also from the order impugned, and therefore, the order impugned cannot be sustained and is liable to be set aside.

Consequently, the revision petition is allowed and the order impugned dated 10.1.2007 passed by the trial court is set aside.

(H.R.PANWAR),J.

rp